

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

SCOTT AND RHONDA BURNETT,
RYAN HENDRICKSON, JEROD
BREIT, SCOTT TRUPIANO, JEREMY
KEEL, HOLLEE ELLIS, and FRANCES
HARVEY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF
REALTORS, REALOGY HOLDINGS CORP.,
HOMESERVICES OF AMERICA, INC., BHH
AFFILIATES, LLC, HSF AFFILIATES, LLC,
RE/MAX LLC, and KELLER WILLIAMS
REALTY, INC.

Case No. 4:19-cv-00332-SRB

Judge Stephen R. Bough

**DEFENDANTS' MOTION TO EXCLUDE
EXPERT TESTIMONY OF JEFFREY ROTHBART**

Defendants National Association of Realtors ("NAR"), Realogy Holdings Corp., HomeServices of America, Inc., BHH Affiliates, LLC, HSF Affiliates, LLC, RE/MAX LLC, and Keller Williams Realty, Inc. (collectively, "Defendants"), by and through their undersigned counsel, hereby move pursuant to Fed. R. Evid. 403 and 702, and according to the scheduling order set by the Court, to strike the Expert Report and exclude the opinions and testimony of Jeffrey Rothbart, whom Plaintiffs have proffered as an expert witness.

In support of their Motion, and as grounds therefor, Defendants submit that:

1. Plaintiffs have proffered Jeffrey Rothbart, a lawyer, businessman, and real estate broker licensed in Illinois, as an expert to opine on (1) numerous factual background matters related to the residential real estate market, and (2) legal conclusions about the "Challenged

Restraints” as alleged by Plaintiffs in this matter. Rothbart’s opinions are improper and should be excluded for several reasons.

2. First, Rothbart’s opinions lack any discussion of the analysis or methodology employed by Rothbart in reaching his conclusions, as is required by Federal Rule of Evidence 702.

3. Second, Rothbart is unqualified to opine about residential real estate matters in this case because he has little actual experience as a residential real estate broker and no experience as a real estate broker in Missouri, where this case is based.

4. Third, Rothbart’s opinions are not based on any citations to the record and are based on insufficient facts, to the extent it has any factual foundation whatsoever.

5. Fourth, most of Rothbart’s opinions amount to factual background rather than specialized expert testimony and, accordingly, are not helpful to the trier of fact.

6. Finally, to the extent Rothbart’s opinions regarding the Challenged Restraints are legal conclusions, they are improper and inadmissible.

7. In further support of its Motion, and as grounds therefor, Defendants rely upon their Suggestions in Support and the exhibits thereto, which are being filed simultaneously herewith.

WHEREFORE, the Court should exclude the opinions and testimony of Jeffrey Rothbart pursuant to Federal Rules of Evidence 403 and 702.

Dated: August 29, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to counsel of record for this case.

/s/ Ethan Glass

*Attorney for Defendant NATIONAL
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